



OFFICE OF THE ATTORNEY GENERAL OF TEXAS
AUSTIN

GERALD C. MANN
ATTORNEY GENERAL

Honorable M. F. Kieke
County Attorney
Lee County
Giddings, Texas

Dear Sir:

Opinion No. 0-3108
Re: Articles 335 and 339, R.C.S.,
County attorney not entitled
to commissions under facts
stated.

Your request for opinion has been received and
carefully considered. We quote from your request as fol-
lows:

"As County Attorney of Lee County, I
should like to be advised as to the following.

"After the Annual Accounts were filed in
1940 and the Commissioner's Court considered
the approval of same, I secured the opinion of
your department in regard to Salary of the
Assessor-Collector. A Special Law had been
previously passed raising his salary from
\$3000.00 to \$4000.00. Upon being advised that
the law was unconstitutional, I so advised
the Commissioner's Court. The Commissioner's
Court then would not approve the account. The
Assessor Collector then sued the Commissioner's
court in District in form of Certiorari to
review the action of the Commissioner's Court.
As the matter devolved around the constitu-
tionality of a Statute and the Commissioner's
court did not care to hurt the officer's stand-
ing, he consented to bringing this suit against
the county, to have the matter adjudicated.

"In a trial in the District Court, I, as
County Attorney, represented the county. The

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District Court held that the commissioner's court had improperly rejected one or two smaller items as expense of office, but held that it has properly acted on the matter of the \$4,000.00 salary. (I am attaching a copy of the judgment.)

"The Officer gave notice of appeal, but later paid into the county treasury approximately \$1,000.00, representing the money which was due the County after the court held the Special Law raising his salary unconstitutional.

"Under the circumstances, am I entitled to the 10% provided for in Article #335 of the 1925 Revised Civil Statutes of Texas?

"In your opinion No. O-665 you seem to indicate that I am. In your Opinion O-2410 you hold that it is necessary that suit must be brought. In the instant case a suit was brought, although, under the circumstances, by agreement, it was instituted by the Officer. It is my opinion that in the foregoing situation the requirement of Art. 339 which states 'He shall institute such proceedings as are necessary to compel the performance of such duties - -' was met by a suit, although not filed by me."

Under the holding of our opinion No. O-2410 (Conference Opinion No. O-3105) which overrules that portion of opinion No. O-665 of this department applicable to the question herein, it is our opinion that your question should be answered in the negative and it is so answered.

We enclose herewith a copy of opinion No. O-2410 for your information.

We wish to point out, however, that it was not the duty of the county attorney to defend the suit against the

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the Commissioners' Court and that the Commissioners' Court would have authority to pay him a reasonable fee for the defense of said suit. See the case of City National Bank v. Presidio County, 26 S. W. 777, which holds that it is not the legal duty of the county attorney to represent the county in suits affecting its interest and the case of Jones v. Veltman, 171 S. W. 291, which holds that Commissioners' Courts have authority to employ county attorneys to represent the county in pending suits.

Very truly yours

ATTORNEY GENERAL OF TEXAS

APPROVED FEB 21, 1941

Loon Allen

FIRST ASSISTANT
ATTORNEY GENERAL

By

Wm. J. Fanning

Wm. J. Fanning
Assistant

WJF:GO

ENCLOSURE

